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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL ANGEL MEJIA,

Defendant and Appellant.

B209200

(Los Angeles County  
Super. Ct. No. BA276045)

APPEAL from a judgment of the Superior Court of Los Angeles County. Jose I. Sandoval, Judge. Affirmed as modified and remanded with directions.

Robert M. Sweet, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, and Lance E. Winters, Deputy Attorney General, for Plaintiff and Respondent.

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## **FACTUAL AND PROCEDURAL BACKGROUND**

According to evidence presented at appellant Miguel Mejia's preliminary hearing, an undercover Los Angeles Police Department detective made contact with Mejia after receiving his name from a confidential informant. After some telephone conversations, the two met in person. The undercover detective stated he was associated with major narcotics traffickers and knew where the traffickers temporarily stashed large quantities of cocaine. The detective inquired if Mejia was interested in conducting a "ripoff," i.e., stealing the cocaine. Mejia said he was, and stated that he controlled a crew of people that conducted such ripoffs. The two agreed to split the proceeds from the ripoff, with 60 percent going to the detective and the balance to Mejia.

After their meeting, the detective obtained 90 kilograms of cocaine from closed cases, and placed the cocaine in a walk-in safe at a warehouse. After installing surveillance video cameras, the detective called Mejia and advised him the ripoff should take place that day. Mejia said he was ready to go with his crew. The detective provided him with the address and the location of the safe, and told Mejia he would leave a key under a trash can near the rear door. Mejia told the detective he would be driving around the warehouse, controlling the crew that would enter the warehouse to take the cocaine.

Shortly thereafter, a group of five men arrived in two vehicles, retrieved the key from the location the detective had advised Mejia it would be hidden, entered the safe, and took the cocaine. A SWAT team arrested the men and took possession of the cocaine. Mejia could not be located.

Mejia remained at large for more than two years, before he was arrested and charged with one count of conspiracy to possess and transport cocaine for sale, and one count of possession of cocaine for sale. It was also alleged that the cocaine in question weighed more than 80 kilograms.

On the eve of trial, Mejia accepted a plea agreement pursuant to which he pled no contest to one count of possession for sale of cocaine (Health & Saf. Code, § 11351),<sup>1</sup> and admitted an amended enhancement allegation that the cocaine exceeded 10 kilograms by

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<sup>1</sup> All undesignated statutory references are to the Health and Safety Code.

weight (§ 11370.4, subd. (a)(3)). Pursuant to the terms of the agreement, the court sentenced Mejia to a 14-year prison term (four years on the possession count and 10 years pursuant to the weight enhancement). As part of the agreement, Mejia agreed to waive 90 days of presentence custody credit. The court then determined that Mejia was entitled to 300 days of presentence credit, consisting of 200 days actual custody credit and 100 days conduct credit.

Mejia filed a notice of appeal and requested a certificate of probable cause, which the trial court issued. We appointed counsel to represent Mejia. After examining the record, counsel filed an opening brief raising no issues. The brief included a declaration stating that counsel had informed Mejia of his right to file a supplemental brief. We advised Mejia of his counsel's inability to find any arguable issues and gave Mejia 30 days to submit by brief or letter any contentions he wished this court to consider. Mejia filed a two-page letter, claiming (1) his trial attorney was ineffective for allegedly failing to explain certain matters to him before he entered his plea, misrepresenting the law, and badgering him into accepting a plea bargain, and (2) his "sentence of 10 yrs. for the amount of drugs involved [i.e., the 10-year enhancement under section 11370.4, subdivision (a)(3)] should [have] be[en] determined by a jury." Mejia later requested, and we granted, permission to file a supplemental brief, in which he asks that he be permitted to withdraw his plea. He again claims his trial attorney was ineffective for the reasons stated in his initial letter brief, and for failing to conduct an adequate investigation. In an apparent attempt to support his contention that his attorney coerced him into accepting the plea agreement, Mejia argues (1) an interpreter was not present during his discussions with trial counsel,<sup>2</sup> and (2) he received the maximum sentence he could have received based on the charges he was facing.<sup>3</sup>

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<sup>2</sup> A Spanish language interpreter was used during the plea and sentencing hearing.

<sup>3</sup> This is factually incorrect. As part of the plea agreement, the enhancement allegation that the cocaine in question weighed more than 80 kilograms was amended to state that the cocaine exceeded 10 kilograms by weight. The original enhancement allegation provides for an additional 25-year prison term; the amended allegation carries an additional 10-year prison term. (See § 11370.4, subd. (a)(3) & (6).)

Although Mejia's appointed counsel did not purport to raise any issues in the opening brief, the brief noted that Mejia may be entitled to three more days of credit for time spent in custody before sentencing – two days of actual custody credit and one additional day for good conduct. We advised the parties that it appeared Mejia is entitled to two additional days of custody credit, but no additional conduct credit. Pursuant to Government Code section 68081, we directed the parties to brief the issue. In response, both parties submitted letters in which they agreed Mejia is entitled to two additional days of custody credit, but no additional conduct credit.

## **DISCUSSION**

### **1. Mejia's Supplemental Contentions.**

Mejia's ineffective assistance of counsel claim is not cognizable on appeal as it involves matters not reflected in the record on appeal. (*People v. Barnett* (1998) 17 Cal.4th 1044, 1183.)

Mejia's contention that the 10-year enhancement he received under section 11370.4, subdivision (a)(3), should have determined by a jury lacks merit because the court, not the jury, possesses the power to sentence a convicted defendant. Moreover, Mejia specifically waived his right to a jury trial as to all matters, and he accepted his 14-year sentence (which included the 10-year enhancement) as part of a plea agreement. Finally, under the enhancement provision in section 11370.4, subdivision (a)(3), the only available sentence is 10 years.

### **2. Presentence Credit.**

As noted above, Mejia and the People agree that Mejia is entitled to two additional days of presentence credit.<sup>4</sup> Accordingly, we will direct the trial court to prepare an amended abstract of judgment reflecting the correct calculation of presentence credit.

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<sup>4</sup> Mejia was arrested on July 8, 2007, and remained in custody continuously through his sentencing on April 24, 2008, a total of 292 days (including both the day of his arrest and the day of sentencing). Because Mejia waived 90 days of actual custody credit, he is entitled to 202 of custody credit, two more than the trial court awarded. In addition, Mejia

3. No Additional Arguable Issues.

We have examined the entire record and are satisfied that appellant's attorney has fully complied with his responsibilities and that no additional arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259; *People v. Wende* (1979) 25 Cal.3d 436.)

**DISPOSITION**

The judgment is modified to reflect a presentence credit of 302 days, consisting of 202 days actual custody, and 100 days conduct credit. The clerk of the superior court is directed to prepare an amended abstract of judgment reflecting the foregoing calculation of presentence credit, and to deliver a copy of the amended abstract to the Department of Corrections and Rehabilitation. The judgment is affirmed in all other respects.

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RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

BIGELOW, J.

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is entitled to 100 days of conduct credit, for a total of 302 days presentence credit. (See *People v. Smith* (1989) 211 Cal.App.3d 523.)